

REMARKS

Claims 11-15, 17, 19 and 20 have been canceled. Claim 22 is canceled in this response.

Claims 1-10, 16, 18, 21, 23 and 24 are currently pending.

Claims 1-10 and 24 have been withdrawn.

Claim 16 has been amended. Support for the amendment can be found in the Specification on page 6, lines 15-16.

Claim 23 has been amended to depend only on claim 16.

New claim 25 has been added. Support for the claim can be found in claim 16 and in the Specification on page 10, lines 11-19.

No new matter has been added.

Finality of the Office Action

Applicants submit that the amendment filed on July 6, 2009 did not necessitate the new grounds of rejection as stated by the Examiner in the first paragraph of page 2 of the Office Action issued February 2, 2010. All of the technical features of the pending claims 16, 18 and 21-23 had been described in the set of claims examined in the previous Office Action of July 27, 2009. Thus, the grounds of the current rejection could have been shown by the Examiner in the July 27, 2009 Office Action. Consequently, Applicants submit that the current Office Action, issued February 2, 2010 should have been a non-final Office Action and request that the finality of this Office Action be vacated.

Claim Objections

The Examiner objects to claims 22 and 23 as being in improper form by referring to two sets of claims to different features.

Applicants have canceled claim 22 and amended claim 23 to depend only on claim 16, thereby overcoming the objection.

Applicants note that the Examiner's statement "given that claims 1, 9 and 11 have been cancelled" is incorrect. Claims 1 and 9 are pending, although withdrawn. Only claim 11 had been

canceled. Applicants note that claims 1 and 9 remain pending since neither of these claims have been canceled in this response.

Rejections Under 35 USC § 112, Second Paragraph

The Examiner has rejected claims 16, 18, 21, 22 and 23 as indefinite. Specifically, the Examiner finds claim 16 confusing in the recitation “wherein an α -linolenic acid content is 5% or less” and indicates that there is insufficient antecedent basis for “the body taste improver” present in claims 22 and 23.

Applicants first note that claim 22 has been canceled, thereby obviating the rejection based upon this claim.

Applicants have amended claim 16 to recite that the α -linolenic acid content is 5% or less of the fat and oil composition, thereby overcoming the rejection.

Applicants have also amended claim 23 by deleting reference to “the body taste improver” which also overcomes the rejection for this claim.

Rejections Under 35 USC § 103

Hiroshi JP 10-099048

The Examiner has rejected claims 16 and 21-23 as obvious over Hiroshi JP 10-099048. The Examiner contends that the Hiroshi reference discloses in paragraphs [0005], [0007] and the abstract an oil composition comprising arachidonic acid, obtained from alga, in an amount ranging from 0.1% to 10% for body in formulated milk. She also contends that Example 4 of the Hiroshi reference shows that the ingredients of the Hiroshi composition are mixed and an oil composition formed. She notes that although the composition does not meet the classification as a vegetable fat and oil composition, the skilled artisan would conclude that the oil composition of the reference would also be desirable for body in a vegetable fat and oil composition. The Examiner further contends that since the Hiroshi oil composition and the instantly claimed composition contain the same ingredients, the Hiroshi oil composition would improve the body taste. Applicants respectfully traverse.

As a preliminary matter, Applicants note that claim 22 has been canceled and claim 23 has been amended by deleting all reference to “body taste.”

Applicants next note that the Examiner admits in section 10, page 4 of the Office Action, the Hiroshi composition described in paragraphs [0005], [0007] and the abstract is not a fat and oil composition. Instead it is a “nutrition enriched composition” that is to be added to formulated milk for an infant. The nutrition enriched composition comprises various ingredients including taurine, arginine, cholesterol, phospholipids, DHA, beta-carotin, sialyloligosaccharide and alpha-tocopherol as an essential component in addition to arachidonic acid. As the Examiner correctly recognizes, such a “nutrition enriched composition” cannot be considered a fat and oil composition.

Further, the claimed fat and oil composition is from vegetables. On the other hand, the fat and oil composition to which the Examiner refers in Example 4 is composed of 30 g cholesterol, 170 g bonito oils, 80 g of SUN-TGA25 which contains 25% arachidonic acid content of fats and oils (i.e. 20 g of arachidonic acid from the fungi *M. alpina*) and 0.2 g of palm oil carotene. Because cholesterol is absent from vegetables, the Hiroshi composition contains only 80.2 g of plant or “vegetable” fat and oil. This means that 200 g or about 71% of the Hiroshi composition is derived from animal fats and oils and therefore the Hiroshi composition cannot be considered a “vegetable fat and oil composition” as is claimed in the instant application. A skilled artisan would not therefore have a reasonable expectation of success in generating a vegetable fat and oil composition as claimed based upon the disclosure of the Hiroshi reference.

In view of the above, Applicants respectfully request reconsideration and removal of the rejection.

Hiroshi in view of Yoshitaka et al. JP 4-197134

The Examiner has rejected claim 18 as obvious over Hiroshi in combination with Yoshitaka et al. The Examiner’s contentions about the disclosure in Hiroshi are noted above. Regarding Yoshitaka et al., the Examiner contends that Yoshitaka et al. disclose a fat and oil composition comprising 20-60% of oleic acid and concludes that a skilled artisan would have

incorporated oleic acid in a fat and oil composition to improve the texture and mouthfeel and improve the overall body of the product. Applicants respectfully traverse

The Yoshitaka et al. reference does not fill the voids left by the Hiroshi reference as discussed above. Therefore, Applicants respectfully request reconsideration and removal of the rejection.

Conclusion

In view of the above remarks, all of the claims are submitted as defining non-obvious, patentable subject matter. Reconsideration of the rejections and allowance of the claims are respectfully requested.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$130.00 is attached hereto.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Susan W. Gorman Reg. No. 46,704 at (858) 792-8855, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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